

UNITED STATES COURT OF APPEALS

JUL 16 2003

FOR THE TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MANUEL ESPINOSA-
TALAMANTES, also known as
Ramon Valles-Lopez,

Defendant-Appellant.

No. 02-2065
(D.C. Nos. CR-01-270-BB &
CV-02-131-BB)
(D. N.M.)

ORDER AND JUDGMENT*

Before **HENRY, BRISCOE**, and **MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Manual Espinosa-Talamantes (defendant), a federal prisoner appearing pro se, appeals the district court's denial of his motion to modify his term of imprisonment under 18 U.S.C. § 3582(c)(2). We previously determined that Fed. R. App. P. 4(b)(1)(A) applies to defendant's appeal, and that defendant failed to file his notice of appeal within the ten-day period required by Rule 4(b)(1)(A). *See United States v. Espinosa-Talamantes*, 319 F.3d 1245, 1246 (10th Cir. 2003). However, because defendant filed his notice of appeal within the thirty-day extension period provided by Rule 4(b)(4), we remanded this case to the district court for the limited purpose of determining whether excusable neglect or good cause exists for the untimely filing of defendant's notice of appeal. *Id.* at 1246-47. During the remand, this appeal remained lodged on the docket of this court. *Id.* at 1247.

On remand, the district court entered an order on March 6, 2003, directing defendant to produce evidence of good cause or excusable neglect as to why his notice of appeal was untimely filed, and the court directed defendant to submit such evidence to it by no later than April 7, 2003. Defendant failed to respond in any way to the district court's order, and the court entered an order dismissing defendant's "civil" case on May 27, 2003. R., Case No. 02CV131, Doc. 8.

In light of the failure of defendant to produce evidence of good cause or excusable neglect as to why his notice of appeal was untimely filed, this appeal is DISMISSED.

Entered for the Court

Robert H. Henry
Circuit Judge